

Application No. 10/078,816

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Reply dated 28 March 2006

Responsive to Office Action mailed on 27 January 2006

REMARKS

**Amendment to the Claims**

**Claims 1-20**, *i.e.*, all of the previously pending claims, have been cancelled. New **Claims 21-40** have been added. Support for the contents of these new claims is found throughout the specification and drawings as originally filed.

**Previous Claim Rejections Under 35 U.S.C. § 103**

Previously pending **Claims 1, 2, 4** through **12**, and **14** through **20** were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,515,194 to Neading *et al.* in view of U.S. Patent No. 5,922,283 to Hsu and further in view of U.S. Patent No. 5,181,905 to Flam.

In addition, previously pending **Claims 3** and **13** were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 6,515,194 to Neading *et al.* in view of U.S. Patent No. 5,922,283 to Hsu and U.S. Patent No. 5,181,905 to Flam, and further in view of U.S. Patent No. 5,947,943 to Lee.

The cancellation in the present Reply of all of the previously pending claims has obviated their rejections. The lack of basis for any rejection of the present claims over the same references is explained below.

**Lack of Basis for Rejection of New Claims Over Previously Cited References**

According to MPEP § 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

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By this standard, a *prima facie* case of obviousness cannot be established with respect to any of the present claims on the basis of the previously cited references, for at least the following reasons.

In each of the three independent claims, the disposable diaper comprises a dehydration indicator comprising a chemical indicating composition providing a visible signal indicative of a level of dehydration in response to the ionic strength of urine exuded into the diaper by its wearer. In addition, the dehydration indicator either comprises an alphanumeric character indicative of the level of dehydration (in Claims 21 and 40) or else the visible signal itself forms an alphanumeric character indicative of the level of dehydration (in Claim 37). For reference, embodiments in which the dehydration indicator comprises an alphanumeric character in addition to the visible signal are shown in Figures 5, 7, and 8, while an embodiment in which the visible signal itself forms the alphanumeric character is shown in Figure 6.

On the other hand, as will be explained below, the cited Neading *et al.*, Hsu, Flam, and Lcc references, either singly or in combination, do not disclose structures equivalent or analogous to the claimed structures. Therefore, their modification and/or combination would not create the claimed structure. (Whether the proposal was to modify, to combine, or to modify and combine the prior art inventions was not clear in the Office Action.) In addition, there is no suggestion or motivation to modify and/or combine the references as previously proposed. Furthermore, the previously proposed modifications and/or combination would not be expected to be successful due to technical issues not addressed in the previous Office Actions. Also, the principles of operation of the cited prior art inventions were improperly changed in the previously proposed modification and/or combination. Finally, the cited prior art inventions were improperly rendered unsuitable for their intended purposes in the previously proposed modification and/or combination.

Lack of disclosure of equivalent or analogous structure

It was admitted in the Final Action mailed on 27 January 2006 that the previously proposed combination of Neading *et al.* and Hsu "fails to disclose the dehydration indicator comprising an alphanumeric character indicative of a level of dehydration". In an attempt to remedy this

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deficiency, the Flam reference was added and it was alleged that "Flam [sic; Flam] teaches the use of letters and numbers to indicate a physical property of a liquid absorbed by an absorbent article, as shown in figure 3."

However, the sole embodiment in which Flam mentions "letters and numbers", i.e., alphanumeric indicia, is one in which a commercially available *temperature sensitive liquid crystal tape* 11 is attached onto the outside of a *wound dressing* 31. The *dressing* 31 has an *adhesive layer* 32, by means of which the *dressing* 31 is attached to the skin of the patient, and an overlying *backing film* 34. The *temperature sensitive liquid crystal tape* 11 is adhered onto the outside of the *backing film* 34, i.e., onto the surface of the *backing film* 34 opposite the skin of the patient. The *temperature sensitive liquid crystal tape* 11 is thereby isolated from contact with anything absorbed by the underlying *dressing* 31. In other words, even if Flam's *wound dressing* 31 were for some reason used to absorb urine exuded by a patient, the *temperature sensitive liquid crystal tape* 11 would not be contacted by the urine. An analogous disposition in the claimed disposable diaper would be on the outside surface of the backsheet. It is clear that any sensing element placed there would not and could not chemically react to the ionic strength of urine contained inside the diaper.

Furthermore, sensing the temperature of a dry surface is not equivalent or even analogous to reacting chemically to the ionic strength of urine as in the claimed invention. Beyond sensing, indicating the surface temperature is not equivalent to chemically indicating in response to the ionic strength of urine. Instead, the *temperature sensitive liquid crystal tape* used by Flam merely indicates the temperature of the surface onto which it is placed. In particular, the temperature indicating elements in the *temperature sensitive liquid crystal tape* are temperature sensitive, color responsive *liquid crystals* that are encapsulated in a substrate (column 3, lines 8-49). These *liquid crystals* neither measure nor indicate anything relative to any chemical property, much less urine ionic strength, as required by the claim. In fact, if the contents of these *liquid crystals* were to be mixed with urine as would be necessary for any chemical reaction to occur, their functionality as temperature indicators would be extinguished.

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Lack of suggestion or motivation

It was stated in the Final Office Action mailed on 27 January 2006 that “[t]he use of letters and numbers as indicia allow [sic; allows] the user to more easily recognize a change in the property and administer appropriate treatment, as disclosed in column 4, lines 56-68”.

However, the cited text in column 4 of Flam does not support the quoted statement in the Office Action. Flam does not even mention “letters and numbers”, i.e., alphanumeric characters, in the cited text. Instead, Flam merely explains that monitoring the temperature beneath a dressing can be useful in determining the stage of an underlying pressure sore, either as it worsens or as healing progresses, and administering appropriate treatment. Of course, one way of monitoring the temperature beneath a dressing is by means of the *temperature sensitive liquid crystal tape* 11 attached onto the outside of the *dressing* 31. However, Flam never mentions or alludes to any advantage of an alphanumeric indication over any other form of indication. Thus, it is clear that this statement in the Office Action represents the Examiner’s own conclusion rather than being an accurate characterization of Flam’s disclosure.

In addition, the characterization of the disclosure of Flam in the Final Office Action mailed on 27 January 2006 constitutes impermissible picking and choosing only so much of the reference’s disclosure as will support the Examiner’s position to the exclusion of other parts necessary to the full appreciation of what the reference fairly suggests to one skilled in the art. In particular, the previous allegation of obviousness was based on picking the general concept of *using alphanumeric characters* out of the context in which it was disclosed by Flam, namely the use of a *temperature sensitive liquid crystal tape* to indicate the temperature of a dry surface, and improperly superimposing this general concept onto the disclosures of Neading *et al.* and Hsu, both of which disclose *chemical reactions to urine*. This approach is in direct contradiction to the decision in *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448 (Fed. Cir. 1986) (citations omitted) (“It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art.”). In this instance, one of skill in the present field of art would not view

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Flam's disclosure of the use of a *temperature sensitive liquid crystal tape* as being useful when contemplating how to provide a visible signal in response to the ionic strength of urine.

Lack of expectation of success

As explained above, the *temperature sensitive liquid crystal tape* 11 is disclosed by Flam as being adhered onto the outside of the *backing film* 34, i.e., onto the surface of the *backing film* 34 opposite the skin of the patient, thereby being isolated from contact with anything absorbed by the underlying *dressing* 31. As also explained above, an analogous disposition in the claimed disposable diaper would be on the outside surface of the backsheet, where any sensing element would not and could not chemically react to the ionic strength of urine contained inside the diaper.

Therefore, the previously proposed modification and/or combination would not result in the present invention. Instead, one of the following would be the result. These alternatives are outlined here because it was not explained in the Final Office Action mailed on 27 January 2006 whether it was proposed to substitute Flam's *temperature sensitive liquid crystal tape* for Hsu's *reagent test strip* or to relocate Hsu's *reagent test strip* like Flam's *temperature sensitive liquid crystal tape*.

- if Flam's *temperature sensitive liquid crystal tape* were substituted for Hsu's *reagent test strip*, then the result would be a diaper with no means of chemically indicating anything in response to the ionic strength of the urine absorbed by the diaper, and
- if Hsu's *reagent test strip* were relocated to the outside surface of the backsheet analogously to Flam's *temperature sensitive liquid crystal tape*, then the result would be a diaper with a means of chemically indicating something, but in order to produce a chemical reaction, the urine would have to be allowed to escape from the interior of the diaper, thereby defeating the fundamental purpose of using the diaper in the first place.

Despite these obvious technical issues, no explanation was provided in the Final Office Action mailed on 27 January 2006 with respect to how the chemically reactive *reagent test strip* of Hsu could be either combined with or replaced by the non-chemically reactive *temperature sensitive liquid crystal tape* of Flam. Likewise, no explanation was provided of how the *temperature*

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*sensitive liquid crystal tape* could be used to measure urine ionic strength. Instead, it was merely stated that “[i]t would...be obvious...to provide the indicator...with alphanumeric characters”. Thus, in the present rejection, the generic concept of *indicating something alphanumerically* was extracted from the specific example of the commercially available *temperature sensitive liquid crystal tape* and applied with a broad brush, without even a hint as to how the *wetness indicator* of Neading *et al.* turned *reagent test strip* of Hsu could be made to indicate alphanumerically. Merely pointing out that one reference discloses something falls short of demonstrating the desirability and practicality of incorporating it into a modification of another reference, much less demonstrating that the incorporation will create the desired result. Specifically, merely pointing out that one reference discloses indicating a surface temperature alphanumerically falls short of demonstrating the desirability or practicality of modifying another reference to indicate a chemical reaction alphanumerically, especially when there are such fundamental differences as the parameter being measured by heat conduction at a surface in one reference *versus* resulting from a chemical reaction with urine in the other reference.

In light of the above, it is clear that one of skill in the art would not expect success in making the proposed modification and/or combination.

Improper changing of principle of operation of prior art invention

According to MPEP 2143.01, “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” Yet, each previously proposed modification and/or combination changed the principle of operation of the respective preceding invention. Specifically, the *simple “on-off” wetness indication via chemical reaction with the urine* of Neading *et al.*, was changed to the different chemically reactive complex range of color responses of Hsu, and then the principle of operation of a chemical reaction with the urine was discarded entirely in order to substitute the non-chemically reactive temperature sensitive liquid crystal tape of Flam.

In terms of structure:

- the original visible *wetness indicator* of Neading *et al.* was

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- replaced by the *reagent test strip* of Hsu, and this *reagent test strip* was then
- combined with or replaced by the *temperature sensitive liquid crystal tape* of Flam (whether it was combined or replaced was not clear in the Office Action).

In terms of function:

- the simple “on-off” *wetness indicator* of Neading *et al.*, in which a color change occurs as a result of a chemical reaction with the water in urine, and which indicates nothing more than the absence or presence of that water, was
- replaced by the *reagent test strip* of Hsu, which exhibits a color response as a result of a chemical reaction with urine that must be compared with the color scale of a reference standard in order to identify the specific gravity or the ionic strength, and this *reagent test strip* was then
- combined with or replaced by the *temperature sensitive liquid crystal tape* of Flam, which does not react chemically with the urine at all, but instead merely indicates the temperature of any surface upon which it is placed.

Thus, it is clear that the principles of operation of the cited prior art inventions were improperly changed in the previously proposed modification and/or combination.

Improper rendering of prior art invention unsuitable for its intended purpose

Again according to MPEP 2143.01, “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” Yet, each previously proposed modification and/or combination rendered the respective preceding prior art invention unsuitable for its intended purpose. Specifically, the invention of Neading *et al.* was rendered unsuitable for its intended purpose of *providing a simple “on-off” indication of wetness* by substituting the complex color response of Hsu that *requires comparison to a color scale for its meaning to be deduced*, and then this intermediate modified “invention” was in turn rendered unsuitable for its intended purpose of *indicating a chemical property of the urine* by substituting the non-chemically reactive *temperature sensitive liquid crystal tape* of Flam.

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Thus, it is clear that the cited prior art inventions were improperly rendered unsuitable for their intended purposes in the previously proposed modification and/or combination.

Improper distortion of meanings of "semipermeable membrane" and "cover"

Throughout the prosecution of the present Application, at least one claim has contained a limitation that the claimed dehydration indicator, or a component of it, is covered by a semipermeable membrane. In every Office Action, the well-known meaning of the term "semipermeable membrane" has been contorted and distorted in such a way as to render the claim language meaningless. In addition, the meaning of the basic term "cover" has likewise been distorted in such a way as to render this term likewise meaningless.

This approach is improper. An inventor is required to use words to describe and claim his invention. It is well-settled that he can and ought to use words that disclose his invention to those of skill in the relevant field of art. When, during examination, the inventor's words are rendered meaningless by a process of disregarding their clear meaning in the specification and their well-known meaning in the particular field of art, the purpose of such disclosure is confounded. In particular, it is improper to, in effect, require an inventor to spell out the intended meaning of every word he uses, even if that word is already well-known in his field of art, in order to preclude the improper attribution of a contorted and distorted meaning to that word during examination. It is likewise improper to require an inventor to seek out and disclaim every possible unintended meaning of every word he uses simply because that word might be used dissimilarly in a different field or because that word might be given an unintended meaning in a general dictionary. To do so would improperly require the inventor to define his invention by what it is not, rather than by what it is.

In particular, in the Office Action mailed on 28 May 2004, the *wetness indicator* 16 of Neading *et al.* was alleged to be covered by the *central portion* 14B of the *fluid transport layer* 14 and the *central portion* 14B was alleged to be a semipermeable membrane. This allegation was refuted in the Reply dated 24 August 2004, where it was pointed out that the *central portion* 14B is not a semipermeable membrane and that the *indicator* 16 of Neading *et al.* is located outboard of the

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*central portion 14B.* An element located outboard of another element is not covered by the inboard element.

Nevertheless, the same allegation was repeated in the Final Office Action mailed on 17 November 2004. Additionally, it was stated that the *indicator 16* is disposed on the *fluid transport layer 14* and that because the *fluid transport layer 14* is fluid permeable, it is a semipermeable membrane. These allegations were refuted in the Reply dated 12 January 2005, where it was pointed out that the meaning of "semipermeable membrane" is well-known in the art and that its well-known meaning is even found in dictionaries. It was also pointed out again that the *indicator 16* is located outboard of the *central portion 14B* and is not covered by the *central portion 14B*.

Then, in the Advisory Action mailed on 22 February 2005, it was alleged that the "topsheet", rather than the previously alleged *central portion 14B* of the *fluid transport layer 14* of Neading *et al.*, "fulfills the limitation of being semipermeable". Advisory Action, page 2, lines 18-19. However, as pointed out in the Appeal Brief dated 13 April 2005, the Neading *et al.* reference does not contain the term "topsheet", so it was presumed that it was intended to refer to the *inner layer 18*. Thus, the two preceding Office Actions in which claims were rejected on the basis that the *central portion 14B* of the *fluid transport layer 14* was somehow equivalent to the claimed semipermeable membrane were contradicted and the basis was changed to the *inner layer 18*, instead of the *central portion 14B* of the *fluid transport layer 14*, being equivalent. In response, in the Appeal Brief, six dictionary and encyclopedia references were provided as evidence in support of the argument that the intended meaning of "semipermeable membrane" is well-known. In addition, the explicit description of the *inner layer 18* by Neading *et al.* themselves was contrasted with the clear meaning of "semipermeable membrane" as used in the present Application and as confirmed by the numerous external references. Furthermore, it was pointed out that the present Application contains a listing of exemplary materials that can be used for the claimed semipermeable membrane, none of which resembles either the *central portion 14B* or the *inner layer 18* of Neading *et al.*

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Nevertheless, in the Examiner's Answer mailed on 1 August 2005, the evidence presented in the Appeal Brief was ignored and the rejection was repeated, this time reverting to the basis that the *central portion 14B* of the *fluid transport layer 14* was equivalent to the claimed semipermeable membrane. Inexplicably, given the content of the preceding Advisory Action, the *inner layer 18* was not mentioned in the statement of rejection in the Examiner's Answer. However, elsewhere in the same Examiner's Answer, both the *central portion 14B* of the *fluid transport layer 14* and the *inner layer 18* were alleged to be equivalent to the claimed semipermeable membrane, despite the obvious impropriety of equating two structural elements in the reference to the single claimed element. In addition, this improper allegation was stated to be based on the broadest reasonable interpretation in view of the specification. It is not understood how such a basis can be stated when the interpretation is so clearly inconsistent with the present specification, as detailed above and in the several Replies and the Appeal Brief.

In response to the Examiner's Answer, in the Reply dated 22 September 2005, yet another external reference was provided as evidence to confirm the propriety of the usage of the term "semipermeable membrane" and to confirm that its meaning is well-known in the relevant field of art. Also, a portion of the present specification was pointed out in which a semipermeable membrane is listed as clearly being distinct from other selectively permeable materials, and specifically as being distinct from meshes and tissues, and it was pointed out that the fibrous *fluid transport layer 14* and *inner layer 18* of Neading *et al.* fall within the category of meshes and tissues, not semipermeable membranes. It was also pointed out again that the *fluid transport layer 14* does not cover the *indicator 16*.

Nevertheless, in the Final Office Action mailed on 27 January 2006, the same erroneous allegation that the *central portion 14B* of the *fluid transport layer 14* is a semipermeable membrane was repeated. This time, it was alleged that one of skill in the art "would recognize that permeability as applied to the art of absorbent articles refers to permeability to liquid exudants. Therefore, the limitation "semipermeable membrane" should be read in light of it's [sic; its] plain meaning, and the permeable layer of Neading fulfills the limitations of the claim". There are several problems with this allegation. First, the claims in the present Application have always been and continue to be directed to the absorption of urine exuded by the wearer of the

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claimed article. Therefore, the statement that the relevant permeability is the "permeability to liquid exudants" clarifies nothing, but instead merely restates what is claimed. Second, the implication that the "plain meaning" of the term "semipermeable membrane" includes either of the fibrous layers of Neading *et al.* alleged to be equivalent to the claimed semipermeable membrane flies in the face of the evidence presented in several previous responses in the form of numerous external references confirming the intended meaning of the term and the fact that this meaning is well-known in the relevant field of art.

Essentially, the allegation refers to skill in the art but then inexplicably zooms outward to a point where all "permability" looks alike. The subject here is not some sort of general "permeability", as might be applied to everything from feces passing through a mesh topsheet to the resistance to permeation provided by a typical backsheet. The subject here is the meaning of the compound term "semipermeable membrane". A homely illustration of the point is that if one were to ask a water purification company to replace the semipermeable membrane in one's basement reverse osmosis unit, the technician would not arrive with one of Neading *et al.*'s fibrous *fluid transport layer 14* or *inner layer 18*. Even the relatively lowly skilled technician would know the difference, as the undersigned can attest from personal experience. Hence, the repeated denial that one of relatively higher skill in the field of chemical engineering would recognize the meaning of the term, explicitly revealed in the evidence already provided, is not understood. Additionally, given that evidence, the burden is now on the Examiner to rebut it, rather than either simply not mentioning it or merely making *conclusory* statements regarding the breadth of the broadest reasonable meaning of the term in question.

It was also alleged in the Final Office Action mailed on 27 January 2006 that because the line separating elements 14A and 14B can be seen in Figure 3 of Neading *et al.*, "the portion of the fluid transport layer indicated as 14A is a separate element from the portion indicated as 14B. Therefore, the indicator 14A is covered at least in part by membrane 14B, and fulfills the limitations of the claim". It is true that elements 14A and 14B are separate elements; this fact has, in effect, been pointed out in several previous responses. However, it is utterly without basis to allege that one covers the other. The element 14A is the *peripheral edge* of the *fluid transport layer 14*, and the element 14B is the *central portion* of that same *fluid transport layer 14*. In

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other words, the *peripheral edge* 14A is an extension of the *fluid transport layer* 14 beyond its *central portion* 14B. By elementary geometry, the **central portion of a sheet does not cover its edge**. The *central portion* 14B of the *fluid transport layer* 14 does not cover the *peripheral edge* 14A of the same *fluid transport layer* 14 because the *central portion* 14B and the *peripheral edge* 14A are beside each other, not in an arrangement wherein one covers the other.

Thus, the only way in which the term "cover" could be construed to make the *central portion* 14B "cover" the *peripheral edge* 14A of the *fluid transport layer* 14 would be to distort the meaning of this term so as to render the claim language meaningless, while simultaneously ignoring the clear disclosure in the present Application of the intended meaning of the term, e.g., in Figures 3 and 4, the selectively permeable layer 75, which explicitly can be a semipermeable membrane, is clearly shown superposed over, i.e., covering, the indicating composition 70 of the claimed dehydration indicator 60.

Lack of suggestion or motivation to add translucent cover

Throughout the prosecution of the present Application, at least one claim has contained a limitation that the claimed dehydration indicator comprises a translucent cover. In every Office Action, it has been alleged that it would have been obvious to make the *outer layer* 22 of Neading *et al.* translucent as taught by Lee. In every response, it has been pointed out that Neading *et al.* explicitly teach away from following Lee's direction and that Neading *et al.* explicitly cite the Lee patent on which the rejections have been based in column 1 of their disclosure.

In particular, in the Office Action mailed on 28 May 2004, this proposal to make the *outer layer* 22 of Neading *et al.* translucent was justified on the basis that doing so would make the *indicator* 16 "easily viewed without removing the article". It is noted that this rationale was not provided by either Neading *et al.* or Lee, but instead was offered by the Examiner. This reasoning was refuted in the Reply dated 24 August 2004, where it was pointed out that the *indicator* 16 of Neading *et al.* is already exposed and visible and, in fact, this constant visibility is a key point of the invention. It was also pointed out that Neading *et al.* explicitly teach away from reapplying the structure taught by Lee.

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Nevertheless, the same rejections were repeated in the Final Office Action mailed on 17 November 2004, this time on the altered basis that making the *outer layer 22* of Neading *et al.* translucent would “allow the entire article of Neading to be covered by the backsheet [sic; *outer layer 22*] while the indicator remains visible. Thus, Lee teaches an improvement to Neading”. This altered reasoning was refuted in the Reply dated 12 January 2005, where it was again pointed out that the *indicator 16* is already visible and that Neading *et al.* explicitly teach away from reapplying the structure taught by Lee.

These facts were inexplicably ignored and, in the Advisory Action mailed on 22 February 2005, it was stated that “figures 6 and 7 of Neading show the indicator within the boundaries of, and therefore covered by, the article 12, thus creating a need for a translucent cover through which the indicator may be seen”. This mischaracterization of the disclosure of Neading *et al.* was refuted in the Appeal Brief dated 13 April 2005, where it was pointed out that the element misidentified as the “article 12” is actually the *diaper substrate 12*, which comprises three layers between which the *fluid transport layer 14* is located, and that in a plan view as in Figures 6 and 7, the *fluid transport layer 14* will appear to be “within the boundaries” of the *diaper substrate 12*, but is still exposed, as explicitly disclosed throughout the description of Neading *et al.* and as clearly shown in the other figures showing views other than a plan view.

In the Examiner’s Answer mailed on 1 August 2005, the correctness of the above was acknowledged in the statement that the *indicator 16* is exposed. However, yet another basis for making the *outer layer 22* of Neading *et al.* translucent was raised. This time, it was stated that Lee’s outer cover “provides a barrier to moisture...which prevents liquids from leaking from the article and protects the indicator from exterior liquids”. It was then stated that by making the outer cover of Neading *et al.* translucent, the *indicator 16* would be “protected...but still easily viewed without removal of the article”. It was also stated in the same Examiner’s Answer that “the translucent outer cover of Lee would provide the additional advantage of protecting the otherwise exposed indicator of Neading, while still allowing the indicator to be visible from the outside”. It is noted that, as with the previous justification, this rationale was not provided by either Neading *et al.* or Lee, but instead was offered by the Examiner.

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This reasoning was refuted in the Reply dated 22 September 2005, where it was pointed out that Neading *et al.* provide no indication whatsoever that the exposure of their *indicator 16* is problematic, never mentioning any problem with regard to leakage or of any need to "protect" the *indicator 16*. It was also pointed out that Lee likewise fails to mention any such problem. Instead, in the Lee reference, it is essential that the *moisture barrier layer 28* of the *backsheets 16* be translucent because the wetness-indicating material 24 is disposed beneath and entirely covered by the moisture barrier layer 28 and would otherwise not be visible. As is explicitly recited at column 3, lines 53-55 of Lee, "the moisture barrier 28 is transparent or translucent, so that the visual appearance of the wetness-indicating material 24 can be perceived through the moisture barrier 28." In other words, in the structure disclosed by Lee, the "visual indicator" that is the object of the invention would not be visible if the outermost layer of the *backsheets* were not translucent. Thus, the only suggestion or motivation provided by Lee relative to a translucent layer is that a layer that covers a "visual indicator" must be translucent so that the indicator beneath it can be seen. This fact is extremely basic; an object hidden behind another object cannot be seen if the overlying object is opaque. However, as previously explained, the *indicator 16* of Neading *et al.* is already visible and it is not covered. Therefore, the teaching of Lee to make a covering layer translucent is not relevant to the article of Neading *et al.*, in which the *indicator 16* is exposed rather than being covered.

Nevertheless, in the Final Office Action mailed on 27 January 2006, the same allegations were repeated on the same basis as in the Examiner's Answer, despite the fact that in every disclosed embodiment, without any modification, the wetness indicator of Neading *et al.* is already visible and so may be easily viewed without removing the article, thereby obviating any need for a translucent cover to enable the indicator to be seen.

Thus, the alleged motivation for making the outer cover of Neading *et al.* translucent does not, in fact, exist. Furthermore, the explicit consideration and rejection of the cited Lee reference by Neading *et al.* is the direct obverse of a suggestion to modify its own teachings or to combine them with the teachings of the rejected Lee reference. In other words, as pointed out in several responses, Neading *et al.* explicitly teach away from reapplying the structure taught by Lee,

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thereby precluding the establishment of a *prima facie* case of obviousness according to MPEP 2141.02 VI and 2145 X.D.

**SUMMARY OF THIS REPLY**

The previously pending claims have been cancelled and new claims have been added. The lack of basis for any rejection of the present claims over the previously cited references has been explained.

In light of the above, timely and favorable consideration of the pending claims and the issuance of a Notice of Allowance are requested.

Respectfully submitted,

The Procter & Gamble Company

By: Michael P. Hayden

Michael P. Hayden

Registration No. 48,433

Phone: (513) 634-5801

Fax: (513) 945-2958 or (513) 634-3007

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Customer No. 27752